



1654

PATENT

Attorney Docket No. PC9344B (121*254)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ke et al.

Serial No.: 09/736,051

Filed: December 13, 2000

For: COMBINATION THERAPY FOR
OSTEOPOROSIS

Group Art Unit: 1654

Examiner: Leary, L.

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J.G.J
12/3/02

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Assistant Commissioner for Patents
Washington, D.C. 20231

TECH CENTER 1600/2900

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASST. COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231 ON THIS 7th DAY OF November 2002.

BY: Jean M. Marshall

RESPONSE

Applicants respectfully respond to the Office Action mailed October 31, 2002. Applicants thank the Examiner for noting that claims 1-4, 6-14, 16-30, 33-42, 45-50, 52-55, 57-62, 65-69, 72-75, 79-80, 84-89 and 92 are allowable over the prior art. Claims 93-108 are rejected under 35 U.S.C. § 135 (b) as untimely. Applicants respectfully traverse.

Claims 93-108 were timely submitted for the following reasons. Pursuant to 35 U.S.C. § 135 (b), claims that are the same as or for the same or substantially the same subject matter as a claim of an issued patent may not be made in an application unless made prior to one year from the date on which the patent was granted. Here, US Patent 6,043,026 was granted on March 28, 2000. On March 27, 2001, less than one year from the date on which the '026 patent issued, Applicants submitted claims 93-108 in an amendment titled Amendment Under 37 C.F.R. § 1.607. A copy of

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this Amendment is attached. The certificate of mailing on the first page of the Amendment shows that it was mailed on March 27, 2001 in compliance with the certificate of mailing procedures in 37 C.F.R. § 1.8. Accordingly, the claims were timely filed.

For these reasons, Applicants respectfully request that the rejections be withdrawn and that an interference be declared between the present application and the '026 patent and any continuing or divisional application thereof.

No fee is believed due for the filing of this paper. If the undersigned is mistaken, however, please charge any fee due or credit any refund to deposit account 03-2775.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

Dated: November 7, 2002

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